IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2123 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANBHAI V VASAVA - Petitioner(s)
Versus
BARODA MUNICIPAL COPORATION - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/12/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order

directing the respondent corporation to give appointment to the petitioner on the post of wireman in the Electricity Department of the respondent corporation from 5.11.1995. It is also further prayed for an appropriate order directing the respondent corporation to pay difference to the petitioner on the basis of the pay scale of Rs.260 – 350 (new pay scale Rs.950 – 1400) from 6.12.1986 instead of present pay scale of Rs.200 – 250 (new pay scale of Rs.775 – 1025).

2. It is the case on behalf of the petitioner that he was working as a labourer in the respondent corporation and was appointed as daily rated labourer in the Electricity Department of Vadodara Municipal Corporation in November – 1993. That on completion of 720 days on the post and in view of award passed by the Industrial Tribunal in IT Reference Nos. 146/76 and 446/81, he was made permanent on the clear vacant post of labourer in the pay scale of Rs.260 – 350. It is also the case on behalf of the petitioner

that during the service in the Electricity Department of the corporation, he appeared for the examination of the Second Class wireman conducted by the Government of Gujarat and he passed the said examination on 27.1.1996. It is the case on behalf of the petitioner that he submitted an application to the respondent corporation for promotion to the post of wireman. It is the case on behalf of the petitioner that though he has been posted in the pay scale of Rs.260 – 350, he was paid salary in the pay scale of Rs.200 – 250 and that he has been discriminated. While relying upon the order dated 30.7/8.1991 of the Office Superintendent, Municipal Corporation, Vadodara (Annexure – A to the petition), it has been submitted on behalf of the petitioner that inspite of the said order by which the services of the petitioner was regularized in the pay scale of Rs.260 – 350 and inspite of the fact that the said order was passed with the approval of the Municipal Commissioner, the petitioner has been paid the salary in the pay scale of Rs.200 – 250 and

therefore, it is requested to allow the present special civil application and to grant the reliefs as prayed for.

3. It has also been submitted that the petitioner made an application on 14.8.1996 for the promotion to the post of wireman, however, the request of the petitioner has been turned down on the ground that there is no promotion channel from labourer to wireman and therefore, as and when the advertisement has been issued by the corporation, the petitioner may applied for the same. It is submitted that one Shri Aalamsha Davalsha Diwan, who was appointed as a labourer along with the petitioner on passing the examination of Second Class wireman, has been given the post of Second Class wireman with effect from the date of passing of the said examination of the Second Class wireman and therefore, it is requested to allow the present special civil application.

4. The petition is opposed by the respondents. An

affidavit in reply is filed on 24th April, 1997. A further affidavit is also filed on behalf of the respondent No.1 dated 21.12.2006. It has been submitted that there is no promotional post from the post of labourer to wireman and therefore, the prayer of the petitioner to promote the petitioner to the post of wireman cannot be granted. It is also further submitted that so far as the prayer of the petitioner to put the petitioner in the pay scale of Rs.260 – 350 is concerned, it is submitted that the petitioner has accepted the said pay scale as far back as in the year 1991 knowing fully that for the unqualified labourer, all such labourers are given the pay scale of Rs.200 – 250 as per the order of the Appointing Authority. It is submitted that as the Office Order of the Office Superintendent was not in consonance with the order passed by the Appointing Authority i.e. Municipal Commissioner, the said communication has not been acted upon and there is no discrimination and all the persons, who were unqualified were made permanent in the pay scale

of Rs.200 – 250 and the petitioner being unqualified, he was required to put permanently in the pay scale of Rs.200 – 250. It is also specifically denied that though the petitioner is posted as labourer, he allegedly discharge his duty as wireman as alleged. Meeting with the case of the Alamsha Davalsha Diwan, it has been submitted that prior to 10.5.1988, the work of distribution of electricity to the residence of the city of Vadodara being the work of the department of distribution of electricity was with the respondent corporation and on and from 10.5.1988 in view of the tri-party agreement entered into between the State of Gujarat, Gujarat Electricity Board and the Corporation, the said work and the department has been handed over to the Gujarat Electricity Board and said Shri Alamsha Davalsha Diwan was promoted to the post of wireman prior to that date i.e. prior to 10.5.1988 and that he is at present in the service of the Gujarat Electricity Board and not in the respondent corporation. Along with the additional affidavit dated 21st December, 2006,

the respondent has produced one order issued by the Municipal Commissioner, Vadodara dated 30th August, 1991 being order No.478/91-92 and relying upon the same, it has been submitted that all those daily wagers on completion of 720 days were required to be confirmed and so far as those unqualified daily wagers are concerned, they were required to put in the pay scale of Rs.200 – 250. It is submitted that on mis-interpretation and due to some reasons, the Office Superintendent issued the aforesaid communication dated 30.7/8.1991. Along with the said reply and the order, the statement of all the workers have been produced. Therefore, it is requested to dismiss the present special civil application.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is not in dispute that the petitioner was serving as a daily wager and as per the judgment and order passed by the Industrial Tribunal

passed in IT Reference Nos.146/76 and 446/81 on completion of 720 days, all the daily wagers/ labourers were required to be made permanent. As per the aforesaid award and even the order passed by the Municipal Commissioner, Vadodara dated 30.8.1991 an order came to be passed to confirm and/or to make all the daily wagers permanent on completion of 720 days and on going though the communication/order dated 30.8.1991 and the list, all the unqualified daily wagers/labourers were required to be put in the pay scale of Rs.200 – 250 and the qualified labourers/daily wagers put in the pay scale of Rs.260 – 350. Accordingly, the petitioner was required to be put in the pay scale of Rs.200 – 250. Accordingly, when the petitioner has been paid salary in the pay scale of Rs.200 – 250, it cannot be said that there is any illegality committed by the respondent corporation. So far as reliance placed upon the communication at Annexure – A is concerned, it is required to be noted that the impugned communication is on the basis of the order passed by the Municipal

Commissioner, Vadodara being order No. 478/91-92 and as stated above, as per the said order, all those unqualified daily wagers were required to be put in the pay scale of Rs.200 – 250 inspite of the aforesaid facts, the Office Superintendent has mentioned to place the petitioner in the pay scale of Rs.260 – 350. Under the circumstances, the said communication has rightly not been acted by the respondent corporation. It is required to be noted that all those unqualified daily wagers/labourers were put in the pay scale of Rs.200 – 250 on completion of 720 days and therefore, the petitioner has rightly been put in the pay scale of Rs.200 – 250. If the petitioner would have been put in the pay scale of Rs.260 -350, then in that case, it can be said that there is discriminatory treatment given to the petitioner but the petitioner has already been put in the pay scale of Rs.200 – 250. So far as the prayer of the petitioner for promotion to the post of wireman is concerned, as per the relevant records, there is no promotional post from

labourer to wireman. Under the circumstances, the petitioner is not entitled to promotion to the post of wireman from the post of labourer. The petitioner is rightly informed by the respondent corporation that as and when an advertisement is issued inviting the applications for the post of wireman, the petitioner may apply.

7. For the reasons stated above, the petition fails. Rule discharged, however, there shall be no order as to costs.

[M.R.Shah, J.]

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